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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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100-100000
P.O. BOX 2000
NEW YORK, NY 10001

EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

02/01/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on 12/3/97

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3735

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the location of the first outlet for transmitting oxygen-enriched air to a location wherein it does not mix with the atmosphere in the internal space must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 1 it is unclear as to what is meant by "taking in ambient air and first and second outlets.

As to claim 2, the term "preferably" is indefinite because it fails to positively claim the specific structure. The term "Velcro" is a generic term and should be replaced with hook and fastener.

As to claims 2-6, and 8-20 the term invention is indefinite and should be replaced with a "system" or "a portable travel system" for providing a reduced - oxygen atmosphere .

As to claim 3, the term, "may be", is indefinite.

Art Unit: 3735

As to claim 4 the term, "preferably a bed" is indefinite.

As to claim 7, the word, "for", should be inserted after, "closed space".

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 5,799,652 (Kotliar).

Although the conflicting claims are not identical, they are not patentably distinct from each other because there is no apparent reason why the applicant was prevented from presenting claims corresponding to those of the instant application during the filing of application No. 08/505,621 now U.S. Patent No. 5,779,965. It is stated in the abstract of this application that "the system may be applied to interior space inside any structure"

As to claim 1, all of the elements of the invention as claimed is taught by Claim 1 of us Patent No. 5,779,965.

Art Unit: 3735

As to claim 7, Kotliar (5,799,652) teaches the use of a gas processing device in claim 11. To use breathing tent as a portable traveling system for providing a low-oxygen environment is a matter of design choice.

As to claim 2 the use of a zipper as a closing means is well known.

As to claim 3, U.S. Patent No. 5,799,652 in claim 11 teaches a chamber comprising a door and wall structure defining a closed space. The material used to construct this structure is simply mechanical choice because various material could be used without diviating from the basic concept of the invention.

As to claim 4, U.S. Patent No. 5,799,652 teaches the breathing chamber which is anchored. See Figures 8.

As to claim 5, U.S. Patent No 5,799,652 teaches such. See Figure 8, item 44.

As to claim 6, claim 22 of U.S. patent No. 5,799,652 teaches a temperature control means.

As to claims 8-20 to adapt the system as thought by U.S. Patent No. 5,799,652 to a portable system would have been obvious to one of ordinary skill in the art.

Any inquiry concerning this communication should be directed to Charles W.

Anderson at telephone number (703) 305-3473.

Charles W. Anderson

Charles W. Anderson:bhw

December 29, 1998

John G. Weiss
Supervisory Patent Examiner
Group 3700